# UNITED STATES PATENT AND TRADEMARK OFFICE

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| 10/763,553 | 01/23/2004 | Luis Felipe Cabrera | 13768.473 | 7511 |

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WORKMAN NYDEGGER/MICROSOFT
1000 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

| EXAMINER |
|---|
| DAILEY, THOMAS J |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *12/2/2008*.
2a)☐ This action is **FINAL**.     2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-23* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-23* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

## DETAILED ACTION

1. Claims 1-23 are pending.


## *Response to Arguments*

2. Applicant's arguments, see Remarks, filed 12/2/2008, with respect to the 35 U.S.C. 103(a) rejections of claims 1-23 have been fully considered and are persuasive. Those rejections have been withdrawn.


## *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ

619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

4. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

5. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).


6. Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 7,313,727. Although the conflicting claims are not identical, they are not patentably distinct from each other because limitations of the patented case are found in the instant application's claims and additional limitations found in the instant application's claims would have bee obvious variants of the patent's claims.


7. Regarding claims 1, 8, and 17 of patent '127, they substantially recite, in a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing

system, and system memory that may more directly accessed by the one or more processors, a method for recovering from a system failure, the method comprising the following:

an act of maintaining state information for each of multiple message transactions, each state information having recovery mode information indicating whether or not the corresponding processing instance is in recovery mode or normal mode;

an act of receiving a message corresponding to a particular message transaction following a message exchange pattern;

an act of loading state information for the message transaction from persistent memory to system memory in response to having received the message;

an act of determining from the state information whether or not the processing instance associated with the particular message transaction is in recovery mode; and

an act of branching process flow for the processing instance associated with the particular message transaction depending on whether or not the processing instance is in recovery mode.

8. Regarding claims 1, 10, and 22 they substantially claim a computing system that a computing system that includes one or more processors, persistent memory configured to store information that persists through power loss of the computing

system, and system memory that may more directly accessed by the one or

more processors, a method for recovering from a system failure (e.g. **claim 1,**

**lines 1-11**), the method comprising the following:

an act of maintaining state information for each of multiple message

transactions, each state information having recovery mode information indicating

whether or not the corresponding processing instance is in recovery mode or

normal mode (e.g., **claim 1, lines 21-23, " upon receiving the message, an act**

**of determining from state information corresponding to the particular**

**message transaction that the instance of an application governing the**

**particular message transaction is in the recovery mode rather than the**

**normal mode")'**

an act of receiving a message corresponding to a particular message

transaction following a message exchange pattern (e.g. **claim 1, lines 15-20,**

**"an act of receiving a message corresponding to a particular message**

**transaction from among the multiple transactions, wherein the message is**

**a normal message suitable for normal mode operations with respect to the**

**particular message transaction and an instance of an application governing**

**the particular message transaction is in the recovery mode rather than the**

**normal mode");**

an act of loading state information for the message transaction from

persistent memory to system memory in response to having received the

message (e.g., **claim 1, lines 21-23, " upon receiving the message, an act of**

**determining from state information corresponding to the particular**

**message transaction that the instance of an application governing the**

**particular message transaction is in the recovery mode rather than the**

**normal mode")'**;

an act of determining from the state information whether or not the processing

instance associated with the particular message transaction is in recovery mode

(e.g., **claim 1, lines 21-23, " upon receiving the message, an act of**

**determining from state information corresponding to the particular**

**message transaction that the instance of an application governing the**

**particular message transaction is in the recovery mode rather than the**

**normal mode"); and**

an act of branching process flow for the processing instance associated with

the particular message transaction depending on whether or not the processing

instance is in recovery mode (e.g. **claim 1, lines 24-27, "an act of determining**

**that the received message is a normal message suitable for normal mode**

**operations with respect to the particular message transaction, wherein the**

**received message cannot be processed by the instance governing the**

**particular message transaction until the instance governing the particular**

**message transaction is in the normal mode").**

## *Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenny S Lin/
Primary Examiner, Art Unit 2452

/T. J. D./
Examiner, Art Unit 2452